

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

AGGREGATE INDUSTRIES  
NORTHEAST REGION, INC.

Employer<sup>1</sup>

and

CHAUFFEURS, TEAMSTERS, HELPERS,  
LOCAL 633 OF NEW HAMPSHIRE,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner<sup>2</sup>

Case 1-RC-21654

**DECISION AND DIRECTION OF ELECTION**<sup>3</sup>

The Employer is engaged in the sale of aggregate products (i.e., concrete), which it ships from its six plants located in New Hampshire. The Petitioner seeks to represent a unit consisting of three dispatch office workers (a shipper and two order takers, herein

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

collectively referred to as dispatchers) employed at the Employer's central dispatch location in Raymond, New Hampshire. The Petitioner currently represents truck drivers employed at several, but not all, of the Employer's six locations.<sup>4</sup> The Employer maintains that the three dispatchers are supervisors within the meaning of the Act and, therefore, that the petition should be dismissed. I find, however, that neither the shipper nor the order takers are statutory supervisors, and I shall include all three employees in the unit found appropriate.

### **Background**

As indicated above, the Employer, a Massachusetts corporation, has a central dispatch office at its facility located at 91 Cheshire Road, Raymond, New Hampshire, and six plants from which it ships concrete, including plants in Raymond, Portsmouth, Manchester, Rochester, Boscawen, and Hudson, New Hampshire. The Employer is divided into several divisions, including Brox Concrete, City Concrete, and F&H Transit, some of which overlap among the plant sites. Each plant has a group of from 6 to 20 drivers and a location supervisor, also called a batch man.<sup>5</sup> The Employer took over the operations in New Hampshire from another company in September 2002.<sup>6</sup>

John Dube, the only witness who testified at the hearing, is the Employer's central dispatch manager. He has worked for the Employer and its predecessor for about 9 years, and currently reports to Rick Labonte. Although he does not know Labonte's title, Labonte is in charge of all six of the New Hampshire locations. Dube has an office adjacent to Labonte's, but testified that he spends 99 percent of his time in the central dispatch office. In the central dispatch office, there are four stations with phones and computers: two in the back of the room for order takers and two in the front of the room for shippers. Currently, two order takers, Leon Murphy and John Freeman, and one shipper, Robert Snell, work in the central dispatch office.<sup>7</sup>

Snell, Freeman, and Murphy receive salaries of about \$50,000 per year, with variation based on longevity with the company. They are paid biweekly, and receive overtime based on a day rate if they work on Saturdays. Some drivers wear uniforms, but the dispatchers do not. Dispatchers receive transportation benefits from the Employer: Freeman has a company truck and uses company gas, while the other two have company

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<sup>4</sup> The record does not establish whether these drivers are represented in one bargaining unit or in multiple units.

<sup>5</sup> About 20 drivers work at Portsmouth; 6 to 8 drivers work at Rochester; about 10 drivers work at Raymond; 13 drivers work at Manchester; 6 drivers work at Boscawen; and about 8 drivers work at Hudson. The drivers at Portsmouth and Rochester are represented by the Petitioner. The drivers at Raymond, Boscawen, and Hudson are not represented by a union. The record is unclear as to the representational status of the drivers at Manchester.

<sup>6</sup> The record does not indicate the identity of the predecessor company or how it was organized.

<sup>7</sup> Dube believes Snell may have worked for the Employer's predecessor for about 14 years.

gas cards. They also have Nextel phones. Typically at the Employer, only location managers and supervisors are issued company vehicles, gas cards, and Nextel phones. The dispatchers begin work between 4:00 a.m. and 6:00 a.m., and work approximately 11 hours each day.

In January 1997, Snell attended the Employer's supervisory training program. In April 1997, Freeman attended the same supervisory training, and also received training in how to deal with difficult people. These courses are provided to the Employer's supervisors and individuals higher in the organization than supervisors.

### **Shipper (Robert Snell)**

*Hiring, firing, laying off, recalling, promoting, adjusting grievances*

Snell has no involvement in hiring, firing, laying off, recalling, or promoting employees, or adjusting their grievances. Dube states that all drivers are "laid off" at the end of each day until Snell and Dube establish the start time schedules for the next day. Snell has no involvement in which drivers are "recalled" when the start times are set for the next day, as that is decided by location supervisors at the plants.

*Authority to assign, or responsibly to direct employees*

The shipper is responsible for assigning loads of product to particular trucks for delivery to customers each day. Dube, the dispatch manager, describes this scheduling process as similar to a chess game, as Snell, the shipper, must make determinations about where and when to ship product while planning for the various loads scheduled for the rest of the day. He often must anticipate five or more deliveries in sequence when making an assignment.

The process begins each afternoon, when Snell and Dube determine the following day's start times for each type of truck at the various plants. The Employer has two types of trucks: those that dispense product from the front, and have all-wheel drive, and those that dispense product from the rear. The two types of trucks also can carry slightly different amounts of product. When Dube is not present, Snell sets the start times for all six plants; otherwise, Snell sets the start times for trucks at three of the six plants and Dube sets the start times for the other three plants. The Employer's computer system generates suggested start times, which Snell and Dube adjust as needed. They review reports of work demands generated by the computer system to set the start times. In setting the start times, Snell and Dube make scheduling determinations based on the type of truck needed, the priority of the customer, the customer's needs, the capacity of the plant in question, and the anticipated workload that day.

Snell and Dube do not consider ability, seniority, or other factors of particular drivers when setting start times for the schedule. Rather, they only determine the type of truck required for a particular job in light of the overall workload for the next day. Although they do know which drivers usually drive certain trucks, they set the start times

without any reference to particular trucks or drivers. Thus, as indicated above, it is the location supervisors at the plants who determine which drivers will work on a particular day.

The start times are determined each afternoon for the following day, and are then faxed to the plants at about 4:00 p.m. Location supervisors then schedule drivers to those start times. Generally, once the start times have been faxed to the location supervisors, they are not changed unless something significant occurs, such as a customer changing a large order. Snell does not consult with anyone else when initially setting start times. When trucks need to be reassigned start times due to unforeseen events, Snell will make changes without consulting with Dube; however, he tells Dube what he is doing and Dube generally goes along with it because Snell is very experienced. Dube rarely overrides one of Snell's decisions about start times.

Throughout the day, the location supervisors call Snell and tell him when a truck returns to the plant and is available for another load. There is no evidence that they discuss who is driving the truck. After learning a truck is available, Snell then consults the computer and generates an order ticket, which is printed at the plant. Based on the quantity of product and the nature of the job, Snell determines how many trucks will go to a job. The ticket tells the location supervisor how much of what product needs to go where, and also has the specific truck number and the truck driver's name on it.

During the work day, Snell uses the computer system's tracking screen to monitor the progress of jobs, to see where drivers are and when they may be expected back at a plant for another assignment. Drivers do not always use their tracking devices, so Snell regularly calls drivers on the 2-way radio to determine where they are and when they anticipate returning to the plant. He is not responsible for monitoring drivers' time, and does not relay messages from managers to the drivers; however, in order to charge customers for jobs that take longer than expected, and in order to plan for other jobs, he checks in with drivers. Furthermore, since concrete is perishable, it is important to keep track of excessive time on jobs for quality control purposes. The only information about drivers' time that Snell records on the schedules are start times and incidents of excessive time.

To accommodate last minute orders, to adjust for jobs that do not go as planned, or to service priority customers while maintaining an efficient operation, Snell sometimes rearranges assignments during the day. He may decide to send a driver to return to a different plant than he normally works from in order to accommodate the workload. For example, Dube testified that on the day before the hearing, trucks arrived at a job and the customer was not ready for the product. Snell then had the trucks return to the plant and dispatched the product to a different job. Dube states that Snell makes these determinations independently, "a lot of the time." A driver may be instructed by the location supervisor at one plant, at Snell's request, to report to a different plant after completing the current job. Snell makes these determinations without consulting management, based on workload and customer needs, after reviewing demand graphs on the computer that tell him where the work is located. Dube states that they try to keep the

trucks moving all the time to be efficient, and to spread the work among the plants so that the trucks are constantly being reloaded and sent out on jobs.

Certain towns and certain customers are regularly serviced out of particular plants. At the end of the day, Snell looks at the schedule to be sure that work goes to the correct plant. There are protocols for distributing work among the plants, including the unionized plants, and he tries to be sure it is followed. In fringe areas where plant territories overlap, Snell decides which plant a load should ship from without consulting anyone. When workload demands it, he will sometimes decide to ship a load to a customer out of a different plant than normally shipped from.

#### *Authority to effectively recommend discipline*

Snell is charged with recording problems with jobs, including any infractions by drivers and customer complaints, and passes the information on to the appropriate manager. He completes a daily dispatch report that chronicles changes, problems, and other events during the day. Although this information may be used in disciplinary actions, Snell does not recommend or effectuate discipline. Occasionally, Snell talks to a driver at the end of the day to try to persuade him to take one additional job. Snell does this without consulting anyone. He has no authority, however, to keep a driver on the job whom he cannot persuade to stay.

#### *Substitution for dispatch manager*

When Dube is on vacation, or away from the dispatch office because of a meeting, Snell does the dispatch manager's job and runs the dispatch office. There is almost no evidence about what the dispatch manager's duties are, however, other than the scheduling duties he shares with the shipper. There is no specific evidence that Snell exercises supervisory authority when he substitutes for Dube. Dube is out of the office once or twice a month for at least half a day, and is out on vacation about 3 weeks each year.

#### *Highest-ranking employee on duty in early morning*

Snell arrives between 4:00 a.m. and 6:00 a.m., depending on the first order of the day. He is expected to arrive 15 minutes before the first order of the day is loaded. This time is determined by the schedule which he substantially sets the previous day, based on customer demands. Until Dube arrives at about 6:30 a.m., Snell is the highest ranking person in the dispatch office and he must handle any unforeseen problems which may arise. According to Dube, during the early morning hours, Snell is in charge of the Employer's entire New Hampshire operation, and must handle problems such as cancellations, accommodating sick calls, and problems at the plants.

For example, recently there was a power outage at one plant in the early morning. Snell had to arrange to cover the work planned for that plant. He told the location supervisor to send the drivers to another plant, and arranged to have the work loads

shipped from other plants. He moved the trucks to the closest plant so he could supply the work as best as possible under the circumstances. Because there are no higher level managers available, Snell does not consult with anyone before making decisions about how to handle unforeseen problems in the early morning. He reports these incidents and how he handled them to Dube when Dube arrives.

#### *Granting time off and releasing employees for the day*

If a driver calls in sick, he will call in to the location supervisor at the plant he reports to, who will then tell Snell so that he can readjust the schedules. Snell does not decide if a driver may be granted time off. Snell has tried to tell drivers they cannot take time off, but, according to Dube, it does not work because Snell cannot force them to work. Although Dube testified that Snell could deny a driver a vacation request, he has never done so because those requests come in advance to location supervisors and apparently are routinely granted. The location supervisor may assign a different driver to the truck of the driver who is out sick or on vacation, or the work may be shipped out of another plant. Snell has no involvement in whether someone else is assigned to the truck when a driver is out.

At the end of the day, either Snell or Dube calls the location supervisors and tells them the trucks are done and can be washed up and released. Snell decides when the work is finished. The location supervisors determine which trucks are released first, based on seniority and other criteria at the plants. If a driver wants an early release, he requests it of the location supervisor, who relays the message to Snell and Dube so they can plan for it. Snell and Dube are not involved in approving or denying such requests, but use the information to plan the shipping schedule. Location supervisors and Rick Labonte are in charge of the plants.

#### *Authority to rent trucks*

Occasionally, the Employer must arrange to rent additional trucks because the workload cannot be accomplished with its own trucks. It first turns to intra-company rentals by attempting to rent trucks from its Massachusetts operation. However, if that cannot meet the need, Dube will ask Snell to call competitors in New Hampshire to temporarily rent trucks. When doing so, Snell calls from a list of companies that Snell developed based on his extensive knowledge of, and experience in, the concrete business in northern New England. Snell does not consult with Dube about which companies to call from the list. Snell has made these calls 2 or 3 times in the past two weeks, and 3 or 4 times in the past month.

#### **Order takers (John Freeman and Leon Murphy)**

##### *Authority to assign work, or to effectively recommend assignments*

During the day, order takers take orders from customers by phone and enter those orders into the computer. They deal directly with customers and have no contact with the

Employer's drivers. The order takers use a centralized computer to examine workload demand graphs in order to determine whether the company can fulfill an order. They try to give the customer the most accurate delivery date possible, to keep them happy, and to fit the order into the company's schedule. Order takers converse with the customer and help the customer determine what product and quantity they need. They are specifically trained in the products and are expected to try to "upsell" higher quality products and to assist customers who do not know much about concrete. Their role includes aspects of both customer service and sales. When the order taker determines an order can be filled and an order is placed, the order taker inputs information about when the shipment is needed, the type of product, quantity, location of the delivery, and, when necessary, the plant from which the delivery will come. The computer then generates the tracking screen, which the shipper then uses to determine the number and types of trucks needed and which plant a shipment will come from.

When workload is normal, the order takers place orders with the Employer's various plants based on customer needs and geography. Normally, orders are placed at the plant closest to the customer's site. Certain customers are regularly serviced by certain plants, while others are serviced based on the most convenient plant to the delivery location. Order takers only vary from placing orders at the closest site when a particular plant is overwhelmed with work. This is particularly so for customers in the "fringe" areas located between the Employer's plants, where the geographic territories overlap. When placing the orders with plants, the order takers consider a geographical protocol and other objective factors found on the computer program. The order taker has no involvement in which driver is assigned the work he may have switched from one plant to another. The order takers try to align capacity of the facilities with customer needs, and do not consider which driver will perform the delivery, as drivers are assigned based on who returns to the plant first.

Occasionally, order takers must change delivery times. They will call customers if the Employer is running late on a shipment. They will also call customers to try to readjust delivery times if new orders come in or if unforeseen events necessitate changes to the schedule.

#### *Substitution for shipper*

Occasionally, order taker Freeman substitutes for the shipper, Snell, on Saturdays. When he does so, he performs both order taking and shipping, as the dispatch office is a one-man job on Saturdays. In the past two years, Freeman has performed the shipper job on Saturdays perhaps 3 or 4 times. Although he used to occasionally substitute as shipper, Murphy has not performed the shipper job in two years.

#### **Conclusion**

I find that the Employer has failed to meet its burden of proving that the shipper or the order takers are statutory supervisors. Under Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to

hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. *Chicago Metallic Corp.*<sup>8</sup> Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory rank. *Brown & Root, Inc.*<sup>9</sup> The existence of some independent judgment alone will not suffice, for the decisive question is whether the employee possesses the authority to use independent judgment with respect to the exercise of one or more of the specific authorities listed in the Act. *Advanced Mining Group*.<sup>10</sup> The burden of proving supervisory status rests on the party alleging that such status exists. *Tucson Gas & Electric Co.*<sup>11</sup> The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co.*<sup>12</sup>

Although the shipper, Snell, determines which trucks will perform which jobs, there is no evidence that his assignment of orders requires any exercise with respect to the drivers of the type of discretion that can be characterized as independent judgment. *Bay Area Los Angeles Express*.<sup>13</sup> Thus, for the most part, Snell plays no role in the drivers' assignments, as the assignment of drivers to particular trucks is made by location supervisors based on seniority, collectively-bargained rules, and other criteria not specified in this record. *Id.*; see *Spector Freight System, Inc.*<sup>14</sup> The shipper assigns work based on workload, geography, customer priorities, and the Employer's protocols regarding which plant ships to certain customers. Notably, the record is clear that the shipper does not consider the driver when making assignments, but only considers the objective factors such as the type of truck required to fill a job. Primarily, orders are

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<sup>8</sup> 273 NLRB 1677, 1689 (1985).

<sup>9</sup> 314 NLRB 19, 20-22 (1994) (authority to assign and to direct less skilled employees, such as typically done by leadmen in crafts, does not itself confer supervisory authority).

<sup>10</sup> 260 NLRB 486, 506-507 (1982).

<sup>11</sup> 241 NLRB 181 (1979).

<sup>12</sup> 308 NLRB 101, 102 (1992).

<sup>13</sup> 275 NLRB 1063, 1075 (1985).

<sup>14</sup> 216 NLRB 551 (1975).



filled by the first available truck to pull into the plant. *See Millard Refrigerator Service, Inc.*;<sup>15</sup> *Express Messenger Systems*.<sup>16</sup> Thus, while Snell determines which trucks will perform which jobs, there is no evidence that his assignment of orders to the drivers requires the type of discretion that can be characterized as independent judgment. The shipper does not direct the drivers in the manner of their work, whether it be driving, delivering product, or receiving product. Indeed, they are directly supervised by and report to the location supervisors at the various plants. Although the shipper's management of the complex workload may indeed require a high level of skill and experience, it does not involve the exercise of independent judgment in any one of the indicia of supervisory authority enumerated by the Act. *Id.*; see *SDI Operating Partners, L.P.*;<sup>17</sup> see also *Ten Broeck Commons*.<sup>18</sup>

Snell has no role in the hiring, firing, transferring, laying off, promoting or disciplining of any employees, or in adjusting employee grievances. Contrary to the Employer's assertion, there is no evidence that Snell effectively recommends the discipline of drivers. In fact, the record is clear that he has no role at all in recommending discipline. Although he is charged with recording problems that occur on the job, some of which may lead to employee discipline, the recording of such problems is merely ministerial in nature. The reports are passed on to management for any further action without Snell making any recommendations or having any further involvement. Relaying complaints or problems to management does not establish supervisory authority. *See Quadrex Environmental Co.*<sup>19</sup>

The mere fact that until Dube arrives at work, Snell is the highest ranking person in the dispatch office and is considered to be in charge does not alone establish

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<sup>15</sup> 326 NLRB 1437 (1998) (assignment and direction with respect to loading and unloading trucks is routine, and not indicative of supervisory status).

<sup>16</sup> 301 NLRB 651, 654 (1991)(dispatching of messengers does not require sufficient exercise of independent judgment to confer supervisory status).

<sup>17</sup> 321 NLRB 111 (1996) (participating in planning and determining staffing needs does not render an employee a supervisor.).

<sup>18</sup> 320 NLRB 806, 811 (1996) (neither the complex nature of the task of assigning work, nor its importance to the employer is itself indicative of supervisory status when the assigning is done in a routine manner). Unlike in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001), in which the Court rejected the Board's interpretation of the term "independent judgment" as distinct from professional judgment in the assignment or responsible direction of work, here, the shipper is not shown to be exercising judgment based on professional stature, technical expertise, or licensure. See, e.g., *American Commercial Barge Line Co.*, 337 NLRB No. 168 (2002). Moreover, the drivers in this case are directly supervised by the location supervisors, and, the dispatch manager is present most of the time in the dispatch office, such that finding Snell a nonsupervisory employee does not have the effect of leaving employees unsupervised.

<sup>19</sup> Above at 101-102.

supervisory status. See *McCullough Environmental Services*.<sup>20</sup> While he must handle any unforeseen problems that may arise, this involves such things as cancellations, accommodating sick calls, and problems at the plants, such as making adjustments to deal with a power outage. These kinds of actions, however, do not involve the exercise of supervisory authority. See, e.g., *Esco Corp.*,<sup>21</sup> in which the Board found that a warehouse "supervisor" was not a statutory supervisor over the warehouse employees even though he was the highest official who regularly worked at the warehouse.

I further find an absence of record evidence establishing that the dispatch manager exercises supervisory authority. Therefore, the fact that Snell, on occasion, substitutes for Dube, the dispatch manager, cannot confer on him supervisory status. Moreover, even if the record supported a finding that the dispatch manager was a statutory supervisor, the record does not establish that this substitution was more than sporadic and insubstantial. See *Carlisle Engineered Products, Inc.*;<sup>22</sup> *Brown & Root, Inc.*<sup>23</sup>

In the absence of evidence supporting a finding that employees exercise at least one of the primary indicia of supervisory authority enumerated in the Act, it is inappropriate to rely on secondary indicia, such as salary, benefits, uniforms, employee perception of supervisory status, or percentage of time worked without direct supervision present.<sup>24</sup> See *Carlisle Engineered Products, Inc.*;<sup>25</sup> *SDI Operating Partners, L.P.*;<sup>26</sup> *Pony Express Courier Corp.*<sup>27</sup> Nonetheless, I find that the secondary indicia of supervisory authority in the record here are inconclusive and, therefore, do not support a finding of supervisory authority.<sup>28</sup>

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<sup>20</sup> 306 NLRB 565, 566 (1992).

<sup>21</sup> 298 NLRB 837 (1990).

<sup>22</sup> 330 NLRB 1359 (2000).

<sup>23</sup> 314 NLRB at 21.

<sup>24</sup> The Employer relies on cases in which the Board considered secondary indicia of supervisory authority; however, in those cases, the Board also found evidence of primary indicia. See, e.g., *Holly Farms Corp.*, 311 NLRB 273, 297 (1993) (driver-coordinator found to be a supervisor based on authority to effectively recommend hiring drivers and supported by secondary indicia).

<sup>25</sup> 330 NLRB at 1359.

<sup>26</sup> 321 NLRB at 112, fn. 2.

<sup>27</sup> 981 F.2d 358 (8<sup>th</sup> Cir. 1992), enfg. 306 NLRB No. 22 (1992).

<sup>28</sup> To the extent that the Employer's argument in its brief can be construed as an assertion that the shipper should be excluded from the bargaining unit as a managerial employee, I find the record does not support such a contention. To be excluded as a managerial employee, an employee must formulate and effectuate management policies by expressing and making operative the decisions of their employer, and have discretion in the performance of their jobs independent of their

For the above reasons, I find that shipper Robert Snell should be included in the unit found appropriate.

Similarly, I find that the Employer has not shown that order takers John Freeman and Leon Murphy exercise supervisory authority within the meaning of Section 2(11) of the Act. Their role is to take orders from customers and place those orders with the company's plants through the computer tracking system. The placement of orders is based primarily on customer need, geography, and work capacity of the plants. Order takers have no role in determining which drivers are assigned to complete the orders they take or in directing the work after an order has been placed. Order taking and customer service tasks are not statutory indicia of supervisory authority, and, therefore, the Employer's point that the order takers use independent judgment in taking orders and serving customers, or that they do so in the Employer's interest, is irrelevant. Although order taking obviously affects the workload of drivers, the customer's needs, and not any independent acts by the order takers, cause this effect on workload. Therefore, I conclude that the order takers do not effectively recommend assignment of work, as asserted by the Employer.

As I have found that the shipper is not a statutory supervisor, I further conclude that the order takers' occasional substitution for the shipper cannot convert the order takers into statutory supervisors.

Therefore, I find that order takers John Freeman and Leon Murphy should be included in the unit found appropriate.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time shippers and order takers, but excluding all other employees, clerical workers, drivers, managers, guards, and supervisors as defined in the Act.

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employer's established policies. See *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). Here, there is no evidence that Snell has discretion to act independent of the Employer's established policies, or that he formulates and effectuates policy in this way. See *Spector Freight System, Inc.*, 216 NLRB 551, 555 (1975). The fact that he may occasionally be able to pledge the Employer's credit when Dube instructs him to rent additional trucks does not establish managerial status since, when doing so, Snell calls from a list of companies that he developed based on his extensive knowledge of, and experience in, the concrete business in northern New England. Thus, his actions are that of a knowledgeable employee and do not involve independent judgment, nor the exercise of independent discretion and are not indicia of managerial status. *Sampson Steel and Supply, Inc.*, 289 NLRB 481, 482 (1988).

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Chauffeurs, Teamsters, Helpers, Local 633 of New Hampshire, International Brotherhood of Teamsters, AFL-CIO.

## **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*;<sup>29</sup> *NLRB v. Wyman-Gordon Co.*<sup>30</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.<sup>31</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 15, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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<sup>29</sup> 156 NLRB 1236 (1966).

<sup>30</sup> 394 U.S. 759 (1969).

<sup>31</sup> 315 NLRB 359 (1994).

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 22, 2003.

/s/ Rosemary Pye

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Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 8th day of August, 2003.

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